

Shirley Non-Zoning Wetlands Bylaw

[AMENDED MARCH 23, 2005]

1. **Purpose and Application:** The purpose of this Bylaw is to supplement the Commonwealth of Massachusetts Wetlands Protection Act, to further protect the wetlands, related water resources, and adjoining land areas in the Town of Shirley by regulating activities likely to have significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, and rare species habitat deemed important to the community. This Bylaw is intended to utilize the Home Rule authority of the Town to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) thereunder.

The definitions and forms, as well as the plan, notice, and hearing requirements utilized under the Wetlands Protection Act shall continue to be applicable, however additional application forms may be required. The Shirley Conservation Commission is hereby designated as the enforcing authority for all matters within the jurisdiction of this Bylaw.

2. **Jurisdiction and Resource Protection Setback:** Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall commence to remove, fill, dredge, or discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; flats; wet meadows; bogs; swamps; vernal pools; banks; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and the one hundred (100) foot Buffer Zone to any of the aforementioned resource areas or lands abutting any of the aforesaid resource areas. Said resource areas shall be protected whether or not they border surface waters. In addition to the requirements of the Wetlands Protection Act, there shall be a 25-foot-wide undisturbed, vegetated strip of naturally occurring plant species maintained between wetland resource areas (310 CMR 10.02(1), excluding land subject to flooding and riverfront area) and activities, as defined in the Wetlands Protection Act Regulations. In addition, no structures shall be permitted within 40 feet of any wetland in order to provide for the aforementioned 25-foot buffer and safe and adequate access around said structures. The purpose of the 25-foot undisturbed strip is to filter out pollutants and sediment before they reach waterways, to help with floodwater absorption, and to support wildlife habitat. This additional requirement shall apply to all activities subject to the Wetlands Protection Act, except the following:
 - a. Activities with either current Board of Health permits, non-expired Orders of Conditions, or non-expired Determinations of Applicability as of March 14, 2005, or activities for which complete Notices of Intent or Requests for Determination have been submitted, but not acted upon, prior to March 14, 2005.

- b. "Limited projects" as defined by the Wetlands Protection Act Regulations General Provisions 310 CMR 10.00. These projects, more particularly described in 310 CMR 10.53(3), include but are not limited to public utilities, public roadways, agricultural projects, water-dependent uses, and access driveways and roadways.
 - c. "Exempt Activities" as defined by the Wetlands Protection Act Regulations 310 CMR 10.58(6). These include, but are not limited to, the maintenance of existing landscaping, such as lawn mowing.
 - d. Emergency projects, as defined in 310 CMR 10.06.
 - e. Repairs to or replacement of an existing sewage disposal system, including required grading allowed under 310 CMR 10.03(3).
 - f. Activities determined by the Conservation Commission to have no adverse effect on resource area values. The burden of proof for such a finding is on the applicant.
 - g. Any lot approved by the Shirley Planning Board prior to March 14, 2005.
 - h. Variances may be granted where public benefits, such as health and safety, outweigh any adverse effect on resource values. The burden of proof for such a finding is on the applicant.
3. **Filing Fees:** After due notice and public hearing, the Commission may promulgate rules and regulations, including a filing fee schedule, to effectuate the purposes of this Bylaw. Notice of the time and place of the hearing shall be given by the Conservation Commission not less than fourteen (14) days prior to the hearing by publishing in a newspaper of general circulation (in Shirley) and by posting at the Town Offices. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.
4. **Third Party Review:** In addition to any filing fee imposed by this Bylaw, the applicant shall reimburse the reasonable costs and expenses borne by the Commission for specific expert engineering and consulting services deemed necessary by the Commission, provided that the scope of the application meets the criteria set forth below. The amount of the reimbursement fee shall be based on the standard set forth below.

The Commission is authorized to charge this site and/or design review reimbursement fee when the Commission determines that a Notice of Intent, Request for Determination, or Certificate of Compliance involves any of the following: 500 square feet or greater of alteration of Freshwater Wetlands; 50 linear feet or greater of alteration of a Bank, Stream, or River; 500 square feet of Land Under Bodies of Water; discharge of any pollutants into surface or ground waters of any resource area under this Bylaw; or construction of a detention or retention basin or other drainage device.

Said specific expert engineering and consultant services may include but are not limited to consultants' overhead and office expenses required to process said Notices, Requests, and Certificates; copying plans and technical submittals for further review; subcontracting for professional services; mileage; wetland survey and delineation; hydrogeologic and drainage analysis; purchase or borrowing of materials; wildlife habitat, rare species, shellfish and fisheries evaluation; and environmental or land use legal consultation.

Said reimbursement fee shall be paid by the applicant within thirty (30) calendar days of receipt of a written request from the Commission. Said payment may be required by the Commission at any point in the reviewing or deliberating processes but not before the Commission has provided the applicant with a written estimate of the cost of the services to be provided. The fee shall be paid to the Town and deposited into a revolving fund established under Chapter 44, Section 53G of the General Laws and shall be expended by the Commission for services approved by the Commission at a public meeting.

In setting the amount of said reimbursement fee, the Commission shall utilize the following standard: the fee shall equal the amount of the actual bills for all expenses incurred for the File Number that are submitted by an expert engineer or consultant.

5. **Appeals:** In the event that any person has been aggrieved by a decision of the Shirley Conservation Commission under this Bylaw, or by its failure to act thereunder, such person may appeal under M.G.L. Chapter 249, Section 4.
6. **Severability:** The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that previously has been issued.
7. **Relationship to the Wetlands Protection Act:** This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) thereunder. Unless otherwise stated in this Bylaw, the areas of jurisdiction, definitions, provisions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and Regulations (310 CMR 10.00) shall continue to apply.
8. **Enforcement:**
 - a. The filing of a Notice or Request shall constitute the consent of the owner and the grant of authority for the Commission, its agents, officers, and employees to enter upon privately owned land for the purpose of performing their duties under this Bylaw and to make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.
 - b. The Commission shall have the authority and duty to enforce this Bylaw, its regulations, and Order of Conditions issued hereunder by Enforcement Orders and civil and criminal court actions.

- c. When the Commission determines that violation of this Bylaw has occurred, it may request the Board of Selectmen and the Town Counsel to take legal action for enforcement under civil law. In addition, the Commission may request the Chief of Police or other authorities to take legal action for enforcement under criminal law.
- d. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- e. Any person who violates any provision of this Bylaw may be punished by a fine of not more than three hundred dollars (\$300.00) per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, or Order of Conditions violated shall constitute a separate offense.
- f. In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws Chapter 40, Section 21D, in which case the penalty shall be as follows:

First offense:	\$ 25.00
Second offense:	\$100.00
Third and subsequent offenses:	\$300.00
- g. No person shall remove, fill, dredge, or alter any Area Subject to Protection under this Bylaw without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an Enforcement Order issued pursuant to this Bylaw. Each day such violation continues constitutes a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Commission shall not be subject to additional penalties unless said person thereafter fails to comply with an Enforcement Order or Order of Conditions.
- h. Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Order issued under this Bylaw shall forthwith comply with any such Order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

SHIRLEY CONSERVATION COMMISSION FEE SCHEDULE

NOTE: These fees are in addition to those outlined under the Massachusetts General Laws Chapter 131, Section 40. These fees are enacted pursuant to the Shirley Non-Zoning Wetlands Bylaw, which was adopted on June 5, 1995. This current fee schedule was adopted by the Shirley Conservation Commission at its public meeting of February 11, 2004, after said meeting was legally advertised.

It is the Commission's experience that costs incurred in the course of the administration of the Shirley Non-Zoning Wetlands Bylaw rise dramatically as the work approaches the edge of the protected resource area or includes work within wetlands and as the scale and complexity of work increases. The following fees are intended to insure more adequate reimbursement to the Town for these costs, without being cost prohibitive to the applicant.

RULES

1. Permit fees are payable at the time of application and are non-refundable.
2. Permit fees shall be calculated by the applicant based upon the schedule below and subject to review and acceptance by the Commission.
3. Any changes to the fee schedule shown below shall be presented at a public hearing of the Commission subsequent to public notice. Any public meeting to change the fee schedule must be advertised and any changes posted at the Town Offices.

FEES

Violations

Please refer to the Shirley Non-Zoning Wetlands Bylaw.

Calculating Wetland Filing Fee under Shirley Non-Zoning Wetlands Bylaw

The wetland filing fee should be calculated using the following steps.

Step 1 - Type of Activity: Review plans and narrative to identify each activity in wetland resource areas and buffer zones.

Step 2 - Number of Activities: Determine the number of each activity associated with the project.

Step 3 - Individual Activity Fee: List the fee amount for each category of activity (see Category Activities and Fees).

Step 4 - Subtotal Activity Fee: Determine the subtotal fee for each type of activity by multiplying the fee for the activity (Step 3) by the number of activities (Step 2). If the activity is within the

Riverfront Area as well as another resource area or Buffer Zone, add 50% to total fee (e.g., multiply the fee by 1.5). If the activity is located in a Riverfront Area only, apply the fee amount for the category without the additional 50%.

Step 5 - Total Project Fee: Add all the subtotals identified in Step 4 to determine the total fee.

Category Activities and Fees

Category 1 (Fee for each activity is \$20)

- a) work on lot with existing single-family house; addition, pool, etc.;
- b) site work without a house;¹
- c) control vegetation;
- d) resource improvement;
- e) work on septic system separate from house;
- f) monitoring well activities minimum roadway;
- g) new agricultural or aquaculture projects;
- h) beaver impoundment flow control device.²

Category 2 (Fee for each activity is \$125)

- a) construction of single-family house;
- b) parking lot;
- c) beach nourishment;
- d) electric generating facility activities;
- e) inland limited projects minus road crossings and agriculture;
- f) each crossing for driveway to single-family house;
- g) each project source (storm drain) discharge;
- h) control vegetation in development;
- i) water level variations;
- j) any other activity not in Category 1,3,4,5, or 6;
- k) water supply exploration.

Category 3 (Fee for each activity is \$260)

- a) site preparation (for development) beyond Notice of Intent scope;
- b) each building (for development) including site;
- c) road construction not crossing or driveway;
- d) hazardous cleanup;
- e) water supply development.

¹ If a house is proposed as part of the project, Category 2 applies regardless of its location on the lot.

² For installation of flow devices designed to allow the beaver impoundment to continue to exist. Requests for permit for destruction of beaver dams and associated wetland loss is Category 2.

Category 4 (Fee for each activity is \$360)

- a) each crossing for development or commercial road;
- b) dam, sluiceway, tidegate (safety) work;
- c) landfills operation/closures;
- d) sand and gravel operations;
- e) railroad line construction;
- f) bridge;
- g) hazardous waste alterations to resource areas;
- h) dredging;
- i) package treatment plant and discharge;
- j) airport tree clearing;
- k) oil and/or hazardous material release response actions.

Category 5 (Fee is \$1 per linear foot; total fee not less than \$25 or more than \$500)

- a) work on docks, piers, revetments, dikes, etc.

Category 6 (Fee is 50¢ per linear foot, but not to exceed \$50 for activities associated with a single-family house or \$500 for all other activities)

- a) boundary delineations for Bordering Vegetated Wetlands.

Effective Date: March 11, 2004